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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

Before

THE HON'BLE MR. JUSTICE P. VISHWANATHA SHETTY

WRIT PETITION NO. 16534/98

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1. Smt. Gangathiamakka,
major,
w/o late Muthurayappa,
Nandaramaiahnapalya,
Nagarapur Dakhale,
Dasanapura Hobli,
Nelamangala Tq.,
Bangalore North.
 2. Smt. Venkatalakshamma,
w/o late Venkata Arasayya,
a/a 46 yrs,
Huskur village,
Gollahalli post,
Bangalore North.
 3. Smt. Puttalakshamma,
w/o S. Madihanumayya,
a/a 41 yrs,
Maskar post,
Tumkur Dist.
 4. Smt. Rangalakshamma,
w/o late Ramaiah,
a/a 39 yrs,
Baradi village,
Mudigere Post,
Nelamangala Taluk,
Bangalore Dist.
 5. Smt. Jayamma,
w/o Gangappa,
a/a 28 yrs,
Thippapura village,
Doddaballapur Taluk,
Bangalore Dist.

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6. Smt. Rangalakshmi,
w/o Nagesh,
a/a 26 yrs,
Isuvanahallipalya,
Nelamangala Taluk,
Bangalore Dist.
7. Sri Gangappa,
s/o Muthurayappa,
a/a 43 yrs,
8. Sri Puttarangiah,
s/o Muthurayappa,
a/a 38 yrs,
9. Sri Krishnappa,
s/o Muthurayappa,
a/a 31 yrs,
10. Sri Haume Gowda,
s/o Muthurayappa,
a/a 28 yrs.

Petitioners Sl.No.7 to 10,
are r/at Nandaramaiahnapalya,
Nagarur Dakhale, Basanapura
Hobli, Nelamangala Taluk,
Bangalore North.

Petitioners

(By Sri Suresh, Advocate for M/s Swamy
and Swamy Ass.)

vs

1. Department of Revenue,
rep. by its Secretary,
Vidhana Soudha,
Bangalore.
2. The Deputy Commissioner,
Bangalore Rural District,
District Court Compound,
Bangalore.
3. The Tahsildar,
Nelamangala Taluk,
Nelamangla,
Bangalore^{Rural} Dist.
Bangalore.

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4. Smt. Huchamma,
w/o Muthurayappa,
a/a 56 yrs,
5. Smt. Gangabyamma,
w/o Gangamuthappa,
d/o Gangamma,
a/a 44 yrs.
6. Smt. Arasamma,
w/o Ramaiah,
d/o Gangamma,
a/a 41 yrs,
7. Smt. Muthamma,
w/o Anjanappa,
a/a 49 yrs,
8. Smt. Hanumakka,
w/o Thimmagowda,
a/a 47 yrs,
9. Smt. Rangamma,
w/o Rangappa,
a/a 46 yrs,
10. Smt. Lakshamma,
w/o Chennarayagowda,
a/a 42 yrs,

R-4 to 10 are presently r/at
Arishinakunte village, Kasaba
Hobli, nwlamangala Taluk,
Bangalore Rural Dist.

Respondents

(By Sri B.E.Kotian, HCGP for R-1 to 3,
Sri ACC Associates, Cvtr. for R-4)

This petition is filed u/s 226 and 227
of the Constitution of India prayin to quash
vide Ann.D to H dt.17.3.98 by R-3

This petition coming on for preliminary
hearing this day, the court made the following:-

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O R D E R

Sri B.E.Kotian, learned Government Advocate is directed to take notice to Respondents-1 to 3.

2. Though this petition is posted for preliminary hearing, with the consent of the learned counsel appearing for the parties, this petition is taken up for final hearing and disposed of, by this order.

3. The petitioners in this petition have called in question the correctness of the orders impugned, wherein the name of Respondents-4 to 10 is directed to be shown in the revenue records.

4. Admittedly a preliminary decree for partition was passed and according to the learned counsel for the petitioner, pursuant to the preliminary decree, the matter was referred to the Deputy Commissioner under Section 54 of the Civil Procedure Code for effecting the partition and allotment of shares. The learned counsel further

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pointed out that since the preliminary decree was an ex parte decree, the petitioners have filed Miscellaneous No.8/96 on the file of the Court of Civil Judge, Junior Division, Nelaman-gala and in the said Miscellaneous petition, the petitioners have obtained stay of final decree proceedings.

5. Having regard to the facts and circum-
stances of the case, I am of the opinion, this is
not a fit case for interference of this court ~~in~~ ✓
against the orders impugned. Admittedly, even
according to the learned counsel for the petitioners
the dispute between the parties is pending adjudi-
cation before the Civil Court. Therefore, ulti-
mately, the rights of the parties will have to be
finally settled by virtue of the final decree that
may be passed by the court, if it has not been
passed by the court as claimed by the learned
counsel for the petitioners. In this view of
the matter, I am unable to persuade myself to go
into the question in this petition ^{as to} whether the
orders impugned suffers from serious illegality

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and one without jurisdiction as contended by the learned counsel for the petitioners. Therefore, I do not find any justification to interfere against the orders impugned. However, since the petitioners have called in question the correctness of the ~~ex parte~~ decree in Miscellaneous No. 8/96, ^{and} the said miscellaneous is pending consideration before the court, it would be in the interest of justice to direct the Civil Judge, Junior Division, Nelamangala to dispose of the Miscellaneous Petition No.8/96, within six months' from the date of receipt of a copy of this order.

6. Therefore, this petition is liable to be rejected. Accordingly, it is rejected.

7. Communicate this order to the court of Civil Judge, Junior Division, Nelamangala, within a week from today.

8. Sri Kotian, learned Govt. Advocate is given four weeks time to file his memo of appearance.

Sd/-
JUDGE

